

2. Such powers and duties are imposed upon the State Office Building Commission, which Commission when exercising such power, is governed by the provisions of law setting forth the manner of appropriation of lands by the Superintendent of Public Works in Sections 442, et seq. of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1870.

COUNTY AUDITOR—UNAUTHORIZED TO REASSESS ALL REALTY IN COUNTY AFTER ASSESSMENT MADE UNDER SECTION 5548-1, GENERAL CODE.

SYLLABUS:

Section 5548-1, General Code, does not authorize the county auditor to reassess all of the real estate in the county after the same has been assessed by him for taxation purposes under authority of Section 5548, General Code.

COLUMBUS, OHIO, May 17, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, in which you make inquiry as to whether this office has recently had occasion to construe or apply Section 5548-1 of the General Code. In your communication referring to this section of the General Code, you say:

“This is the section which involves the power of the county auditor to change valuations of real estate in subdivisions of the county. The precise question we are interested in is whether or not the county auditor has the power to make a blanket reduction on all property of the county, and if he has that power, how the notice should be given to each property owner affected by said reduction.”

This office has not had any occasion recently to consider the provisions of Section 5548-1, General Code, referred to in your communication.

By Section 5548, General Code, each county is made the unit for assessing real estate for taxation purposes, and the county auditor, in addition to his other duties, is the assessor of all the real estate in his county for such purposes.

Section 5548, General Code, which was enacted in its present form by the Act of April 17, 1925, (111 O. L., 418) further provides that in the year 1925 and in every sixth year thereafter, it shall be the duty of the county auditor to assess all the real estate situated in the county, with the proviso that if the real property in any county or subdivision thereof has been reappraised in the years 1922, 1923 or 1924, and the Tax Commission of Ohio, upon the application of the county auditor, finds that the real property in said county or subdivision thereof is appraised at its true value in money, then there shall be no general reassessment of property in said county or subdivision in the year 1925. In making the assessment of the real estate in a county, pursuant to the authority provided by Section 5548, General Code, regard is had, of course, to the requirements of Section 5560, General Code, which provides that each parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon.

Section 5548-1, General Code, which is referred to in your communication, reads as follows:

"In any year after the year in which an assessment has been made by the county auditor of all the real estate in any subdivision as herein provided, it shall be the duty of such county auditor at any time to revalue and assess any part of the real estate contained in such subdivision where he finds that the same has changed in value, or is not on the duplicate at its true value in money, and in such case he shall determine the true value thereof in money, as herein provided for assessing the entire property in any such subdivision. In such case the county auditor shall notify the owner of such real estate, or the person in whose name the same stands charged on the duplicate of his intention to reassess such real estate and of the change in valuation thereof in such reassessment, and in case the owner of such real estate is not satisfied with such reassessment, the same shall be heard at the next ensuing session of the county board of revision, and such owner shall have the right to appeal therefrom to the tax commission of Ohio as provided in other cases."

There is nothing in the provisions of this section authorizing the county auditor to make a blanket reassessment of all of the real estate in the county, after the same has been assessed, pursuant to the provisions of Section 5548, General Code. This section expends its force in authorizing the county auditor, on notice to the owner thereof, to reassess any part or parcel of real estate in any subdivision of the county if such county auditor finds that the value of such property has changed, or that the property for any other reason is not on the duplicate at its true value in money, and in providing for a review of such reassessment by the county board of revision and the Tax Commission of Ohio at the instance of a property owner who may be dissatisfied with such reassessment of his property. *Hammond, Treasurer, vs. Winder*, 100 O. S., 433, 440.

In the consideration of the question here presented it may perhaps be pertinent to note that the Tax Commission of Ohio is authorized under certain circumstances to make a horizontal increase or decrease in the assessed valuation of real and personal property and the various classes of such property in any county or subdivision thereof. This follows from the terms of Sections 5612 to 5615, inclusive, of the General Code, which, in substance, provide that annually, each county auditor shall make out and transmit to the Tax Commission of Ohio an abstract of the real and personal property of each taxing district in his county, in which he shall set forth the aggregate amount and value of each class of real and personal property in such county, and in each taxing district therein, and that the Tax Commission shall annually determine whether the real and personal property and the various classes thereof have been assessed at their true value in money, and, if it finds that any class of real or personal property in any county or taxing district is not listed at its true value in money, it may increase or decrease the aggregate value of any class of real or personal property in such county or taxing district by such rate per cent as will place such property on the list at its true value in money; and that the Tax Commission shall transmit its conclusion to the county auditor, who shall forthwith add to or deduct from each tract, lot or parcel of real property or class of real property the required per cent of such increase or deduction.

In this connection, it may be further added that if, after action is taken by the Tax Commission of Ohio and by the county auditor, pursuant to the provisions of the sections of the General Code, last noted, any property owner is aggrieved by reason of an increase effected thereby in the assessed valuation of any lot or parcel of land owned by him, such property owner may resort to the successive administrative remedies provided for by Sections 5609 to 5611-2, inclusive; that is, by complaint

to the county board of revision, by appeal to the Tax Commission of Ohio, and by petition in error to the Common Pleas Court of the county. *Hammond, Treasurer, vs. Winder*, 112 O. S., 158.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1871.

PRISONER—SENTENCED BY COURT TO SERVE A MINIMUM TERM WHICH IS THE STATUTORY MAXIMUM FOR HIS CRIME—ENTITLED TO DIMINUTION OF SENTENCE FOR GOOD BEHAVIOUR, BUT NOT TO PAROLE.

SYLLABUS:

Under the decision of the Supreme Court of Ohio in the case of Reeves vs. Thomas, decided March 5, 1930, a prisoner, who is sentenced to the Ohio Penitentiary under a sentence fixing the minimum period of duration the same as the maximum fixed by the statute, is entitled to diminution of sentence for good behavior, but the Ohio Board of Clemency has no authority to parole such prisoner after the minimum period of time fixed by the statute.

COLUMBUS, OHIO, May 17, 1930.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“On March 5, 1930 the Supreme Court decided the case of *Frank Reeves vs. P. E. Thomas, Warden of the Ohio Penitentiary*. In this opinion, the Supreme Court holds that the old determinate law is still effective and that if a prisoner is sentenced to a minimum term which is equal to the maximum this determinate sentence law becomes operative and the prisoner is entitled to deduction for good time.

Under the old determinate sentence law, the paroling authority had the power to parole the prisoner after the expiration of the minimum term prescribed by statute for that offense but before the expiration of the determinate term as set by the sentencing court.

Please advise whether in those cases where the minimum set by the court is equal to the maximum set by statute this power of the Board of Clemency still exists to grant parole before the termination of the minimum sentence fixed by the Court.”

In the case of *Frank Reeves vs. P. E. Thomas, as Warden of the Ohio Penitentiary*, decided by the Supreme Court of Ohio, March 5, 1930, the court had under consideration a case wherein the trial court imposed a sentence “for a period of seven years” upon a defendant convicted of the crime of grand larceny. The term of imprisonment fixed by the court was the same as the maximum penalty provided by the statute defining the offense of grand larceny. The precise question before the court was whether or not the prisoner under such a sentence, that is, where the minimum term fixed by the court is the same as the maximum fixed by the statute defining the offense, is entitled to a diminution of sentence for good behavior. The court held that such a sentence is a definite one and that the defendant was entitled to a diminution of sentence as provided in Section 2163 of the General Code. In arriving at